

GEORGE S. SWAN

IBLA 79-50 Decided January 16, 1979

Appeal from the decision of the Eastern States Office of the Bureau of Land Management rejecting oil and gas lease offer ES 18795 (Mich).

Affirmed as modified and remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications:
Reinstatement--Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer for acquired lands, filed "over-the-counter," is properly rejected when the accompanying rental payment is deficient by more than 10 percent. However, where the balance of the rental is tendered with the notice of appeal, the offer may be reinstated with priority from the date the deficiency was corrected.

APPEARANCES: George S. Swan, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 9, 1978, George S. Swan filed "over-the-counter" at the Eastern States Office of the Bureau of Land Management (BLM), his noncompetitive oil and gas lease offer ES 18795 for a parcel of federally acquired land in Michigan comprising 165.8 acres. The offer was accompanied by a tender of annual advance rental in the amount of \$82.90.

By decision dated October 6, 1978, BLM rejected the offer, correctly pointing out that 43 CFR 3103.3-2 now requires payment of annual rental at the rate of \$1 per acre or fraction thereof, in consequence of which Swan's payment was deficient by \$83.10 - more than 50 percent. The decision also noted correctly that, pursuant to 43 CFR 3103.3-1, an offer may not be accepted if the tender of the first year's rental is deficient by more than 10 percent.

Swan filed a timely notice of appeal and statement of reasons with BLM on October 27, 1978, at which time he tendered an additional \$83.10, the balance of the deficient rental.

Appellant declares that he submitted his offer in reliance on the "Special Instructions" which are printed on the lease form (Form 3110-3; September 1973), and which state that the "[A]mount remitted should include * * * the first year's rental of the land requested at the rate of 50 cents an acre or fraction thereof." He states that this instruction was the only information he had on the subject of rental rates, and he was unaware of the increase effected by the amendment of the regulation in January 1977.

As we have observed, BLM's decision correctly identified the applicable regulations, and rejection of the offer was not incorrect under the circumstances. However, we note that at least some other BLM offices have made it a practice to call upon the offeror to remit the deficient rental where the offer has been filed "over-the-counter," (as distinguished from a "simultaneous" offer). If the balance is paid, the offers earn priority from the date the deficiency is cured. See, Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978); Tipperary Oil and Gas Corp., 35 IBLA 120 (1978); Dean W. Rowell, 33 IBLA 30 (1977). Unlike a simultaneously-filed offer, an over-the-counter offer which has been rejected for some deficiency may, in appropriate circumstances, be reinstated with priority from the date the deficiency was corrected. Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27-28 (fn. 1) (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). No reason appears from the record why this offer should not be reinstated with priority from October 27, 1978, the date of BLM's receipt of the balance of the rental.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified, and the case is remanded to the Eastern States Office, BLM, for further action consistent with this opinion.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

I concur in the result:

Joseph W. Goss
Administrative Judge

